



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

30W DEFENSE PENTAGON
WASHINGTON, DC 203013000

May 22, 1998

DP/FC

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT
ASN (RDA)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Contracts to be Performed in the Federal Republic of
Germany (Germany)

On 27 March 1998, the governments of the United States and the Federal Republic of Germany agreed to new implementation procedures for Articles 72 and 73, Supplementary Agreement (SA) to NATO Status of Forces Agreement (SOFA). Employees of a U.S. Department of Defense contractor expected to perform duties under contract in Germany may, under certain conditions, be characterized as troop care personnel, pursuant to Article 72, or as technical experts, pursuant to Article 73, of the NATO SOFA SA. Unlike other employees, troop care personnel and technical experts are not subject to German income taxation. The Department of Defense has agreed to obtain approval by German authorities to establish these contract positions and to accredit the persons nominated to fill them.

Effective immediately, ensure that each contracting activity complies with the attached guidance when it anticipates placement of a contract that will involve performance in Germany by troop care personnel or technical experts. This guidance supplements the procedures under Defense Federal Acquisition Regulation Supplement (DFARS) 225.802-70. After we assess the effectiveness of these procedures, we will make appropriate revisions to the DFARS. The point of contact on my staff is Mr. Walt Henderson, telephone (703)697-9351.

This supersedes my memorandum of February 26, 1997, on this same subject.

Eleanor R. Spector
Director, Defense Procurement

Attachment

**GUIDANCE ON UTILIZATION OF EMPLOYEES OF DEPARTMENT OF DEFENSE
CONTRACTORS IN THE FEDERAL REPUBLIC OF GERMANY**

1. Definitions

- a. "Troop care" (TC) personnel, as used in this guidance, refers to persons who, pursuant to Article 72 of the NATO Status of Forces Supplementary Agreement (SOFA SA), render services exclusively to members of the United States Forces, members of its civilian component and the dependents of both. The services are those which cannot be undertaken by German enterprises without prejudice to the military requirements of the United States Forces. Such services shall comprise the services of physicians, dentists, dental hygienists, medical services coordinators, physical and occupational therapists, clinical child psychologists, early intervention special educators and early intervention project managers, social workers, speech-language therapists and audiologists, psychotherapists, certified nurses, family advocacy counselors, family wellness counselors, family service coordinators, drug abuse counselors, persons engaged in military career and occupational counseling, testing and training.
- b. "Technical expert" (TE) personnel refers to persons who, pursuant to Article 73 of the SOFA SA, possess a high degree of skill or knowledge for the accomplishment of complex tasks of a technical military nature, or **of** a technical scientific nature, as distinguished from routine mental, manual or physical processes. The skill and knowledge must have been acquired through a process of higher education or through a long period of specialized training and experience. Personnel normally classified as blue collar shall not normally be considered to be technical experts within the meaning of Article 73 of the NATO SOFA SA. The same is true for skilled workers, as well as for crafts and trades occupations.

2. Contractor employees in Germany

- a. Employees of Department of Defense (DoD) contractors may not start work in the Federal Republic of Germany (Germany) unless:
 - (1) They are determined to be either TC or TE personnel, as defined above, in which case they are exempt from German income taxation; and they are eligible for

Attachment

individual and family logistics support; or

- (2) German authorities issue them work permits, in which case they are subject to German income taxation; and they are ineligible for individual and family logistical support. (There may be some cases where the German authorities will excuse the requirement for a work permit.)

b. It is understood that TC/TE personnel, in addition to being exempt from German income taxation, are also exempt from German labor legislation and Germany social programs contributions.

c. No person may acquire TC or TE status who is a German national, a person ordinarily resident in the Federal Republic of Germany, a national **of** any state (country) not a member of the North Atlantic Treaty Organization, or a stateless person.

3. Determinations

Contracts involving performance in Germany by TC or TE employees **require** two determinations for that portion of the contract to be performed in Germany:

(a) Approval of the TC and/or TE positions to be utilized in contract performance, and

(b) Accreditation of persons to fill approved positions.

Authority for both determinations rests with:

HQ, US Army, Europe, and Seventh **Army**
ATTN: DOCPER
Unit 2915.0
APO AE 09100

Phone: **011 (49) 621-487-8506**
Fax: **011 (49) 621-487-851**
e-mail: **<http://www.chrma.hqusaareur.army.mil>**

4. Pre-solicitation; Request for Approval of **TC** and/or **TE** positions

a. Contracting activities intending to award contracts to be performed in Germany that require the use of TC and/or **TE** positions shall, at the earliest practicable time, prepare and submit to the DOCPER a request for approval of such positions. The request shall include:

- (1) Summary of the work to be performed by the contractor in general and work specifically to be performed by **TC/TE** personnel;

- (2) Location (s) in Germany where the work is expected to be performed;
- (3) Anticipated contract award date; and
- (4) Total number of employees (including TC/TE personnel) to be employed at each location.

Data must be consistent with the intended statement of work
Contracting activities should expect action by DOCPER in 8 weeks:

5. Solicitations

- a. Solicitations shall specify TC/TE positions required for contract performance in Germany. Note that the solicitation may not specify particular positions for that portion of the contract to be performed outside Germany. Positions for which approval has not been obtained at the time of issuance of the solicitation will be identified.
- b. Solicitations that specify use of TC/TE positions that have not received DOCPER approval at the time the solicitation is issued shall contain a provision providing for equitable adjustment in the contract price or estimated cost/fee if such TC/TE positions are not approved. Attachment (1) is a sample of such a provision.
- c. Solicitations shall be modified to reflect position disapprovals received subsequent to issuance of the solicitation but prior to contract award.

6. Contracts

- a. The contracting activity shall provide promptly to DOCPER a notification when a contract is awarded for work involving TC/TE personnel. Notification shall include:
 - (1) Name of contractor;
 - (2) Contract number;
 - (3) Date of contract award;
 - (4) Contract expiration date;
 - (5) Summary of the work to be performed by the contractor, and identification of work requiring the use of TC/TE employees;
 - (6) Location(s) in Germany where the work is expected to be performed;
 - (7) Total number of employees (including TC/TE personnel) to be employed at each location and their anticipated arrival dates.
- b. Contracts shall contain a clause requiring contractors, as soon as practicable following contract award, to complete and submit to the contracting activity a questionnaire on nominees for TC/TE positions. Attachment (2), with questionnaire, is a sample of such a clause.

- c. Contracting activities shall forward completed questionnaires to DOCPER upon receipt. DOCPER will coordinate with appropriate authorities and notify the contracting activity when TC/TE status has been granted.
- d. Contractors may not fill TC/TE positions with employees that have not been accredited for those positions.
- e. Contracting activities shall notify DOCPER when advised that an accredited employee is no longer performing duties requiring accreditation.
- f. Contracting activities shall provide copies of correspondence with DOCPER to:

DCMC Southern Europe
CMR 410 Box 761
APO AE 09096
Phone: 011-49-611-816-2003/DSN 314-336-2003
Fax: 011-49-611-816-2091
E-mail: jjeong@europe.dla.mil

7. Contracting Officer's Representative

Contracting activities should consider appointment of an in-country Contracting Officer's Representative from the sponsoring command to coordinate with DOCPER on administration **of** TC/TE contract employee **matters**.

SOLICITATION PROVISION

This contract will require utilization by the contractor of (Troop Care (TC)) (Technical Expert (TE)) employees in Germany. The Department of Defense must obtain approval by German authorities to establish such contract positions. Following are (TC) (TE) positions specified in this solicitation for which approval has not been obtained at date of solicitation issuance:

(List)

Offers should be based on the assumption that approval of the above positions will be granted. In the event that, following contract award, any or all of the above positions are disapproved, the Government and the contractor shall negotiate an equitable adjustment in the contract price or estimated cost/fee.

CLAUSE

This contract requires the utilization of (Troop Care (TC)) (Technical Expert (TE)) personnel to be employed by the contractor. The Department of Defense must obtain approval by German authorities for accreditation of employees to fill such contract positions. Contractor may not employ (TC) (TE) personnel that have not been accredited to specific positions at specific locations. To expedite accreditation, contractor agrees to promptly complete in accurate detail and return to the contracting officer a questionnaire (Attachment) on each employee designated to fill a (TC) (TE) position.

Contractor shall promptly notify the contracting officer if a (TC) (TE) employee once accredited is no longer performing duties requiring accreditation.

Contractor recognizes that German government authorities may from time to time visit contractor's work areas for the purpose of verifying the status of positions and personnel as (TC) (TE) employees.

**INFORMATION ABOUT AN INDIVIDUAL AND HIS/HER ACTIVITY
INFORMATIONEN ÜBER EINE PERSON UND IHRE TÄTIGKEIT**

**□ AS TECHNICAL EXPERT / ALS TECHNISCHE FACHKRAFT
(Art. 73 SA NATO SOFA) / (Art. 73 ZA-NTS)**

**□ IN THE TROOP CARE / IN DER TRUPPENBETREUUNG
(Art. 72 SA NATO SOFA) / (Art. 72 ZA-NTS)**

For Use By US/German Authorities Only

US-Record No:

Bearbeitungs-Nr.

Date Received:

Datum des Einganges:

Privacy Act Statement

Information provided will be used as a basis for determining eligibility for treatment as a troop care provider/technical expert under the provisions of Articles 72/73 of the NATO SOFA Supplementary Agreement (SA). Such treatment includes certain exemptions from the application of German law, as well as eligibility for benefits from US Forces (such as individual logistic support). Furnishing the information in this questionnaire, as well as making declarations and release is voluntary. Failure to provide this information, however, may result in your not being considered eligible for treatment as a troop care provider/technical expert under the provisions of Articles 72/73 SA. If information provided in this questionnaire is later found to have been misrepresented or is false or incomplete, potential adverse consequences include loss of all exemptions and benefits that you have obtained as a troop care provider/technical expert under the provisions of Articles 72/73 SA, as well as being subjected to various civil and criminal actions taken by German tax, labor or other authorities.

Erklärung zum Datenschutzgesetz

Die Angaben dienen zur Feststellung, ob die Voraussetzungen fuer die Behandlung als Beschaeftigter in der Truppenbetreuung/technische Fachkraft gemaeass den Bestimmungen der Artikel 72/73 des Zusatzabkommens zum NATO-Truppenstatut vorliegen. Eine derartige Behandlung schliesst Befreiungen von der Anwendung bestimmter Vorschriften des deutschen Rechts sowie einen Anspruch auf Leistungen der US-Streitkraefte (z.B. logistische Unterstuetzung fuer den Einzelnen) ein. Die Erteilung von Informationen in diesem Fragebogen, sowie die Abgabe von Erklarungen und die Erlaubniserteilung zur Weitergabe dieser Informationen ist freiwillig. Die Verweigerung dieser Informationen kann jedoch zu der Feststellung fuehren, dass die Voraussetzungen fuer die Behandlung als Beschaeftigter in der Truppenbetreuung/technische Fachkraft gemaeass den Bestimmungen der Artikel 72/73 nicht vorliegen. Wird zu einem spaeteren Zeitpunkt festgestellt, dass in diesem Fragebogen gemachte Angaben falsch dargestellt, unrichtig oder unvollstaendig sind, kann dies zum Verlust aller Ihnen als Beschaeftigter in der Truppenbetreuung/technische Fachkraft gemaeass den Bestimmungen der Artikel 72/73 gewaehrten Befreiungen und Verguenstigungen fuehren. Ausserdem koennte dies eine zivil- und strafrechtliche Verfolgung durch deutsche Steuer-, Arbeitsverwaltungs- und andere Behoerden nach sich ziehen.

1. Personal Data / Angaben zur Person

1. Last name / Name:

2. First name(s) / Vorname(n):

3. Home Address: Street, No, Post-code, town and state, home phone no / Wohnanschrift, Strasse, Hausnummer, Postleitzahl, Ort, Telefonnummer

4. Date of Birth / Geb-Datum:

5. SSN / US-Sozialversicherungsnummer:

6. Citizenship / Staatsbürgerschaft:

7. Family Status: Are you married? Yes ___ No ___ / Familienstand: Sind Sie verheiratet? Ja ___ Nein ___

8. Number of dependent children / Zahl der unterhaltsber. Kinder:

Number of additional dependents / Zahl der weiteren abhängigen Familienangehörigen:

9. Passport No / Paßnummer:

3. Last name of spouse (if German: birth name), first name(s), citizenship of spouse / Name des Ehegatten (bei Deutschen auch Geburtsname), Vorname(n), Staatsbürgerschaft des Ehegatten:

II. Examination of Ordinarily Resident / Prüfung des Wohnsitzes

Individuals who are ordinarily resident in the territory of the Federal Republic of Germany in accordance with Article 72/73 NATO SOFA SA at the time commencing work under a contract in Germany are not entitled to exemptions and benefits provided under the provisions of Articles 72/73 NATO SOFA SA. In determining whether an individual is ordinarily resident in Germany, the totality of circumstances are weighed to see whether the individual has shifted the main focus of vital interests from another nation to Germany. This examination does not relate to Article X NATO SOFA. In weighing the totality of the circumstances, US and German authorities will take the following into consideration:

Personen, die zum Zeitpunkt der Aufnahme einer Arbeit in Deutschland im Rahmen eines Vertrages gemäss Artikel 72/73 ZA-NTS einen Wohnsitz oder gewöhnlichen Aufenthalt im Bundesgebiet haben, haben keinen Anspruch auf Befreiungen und Leistungen gemäss den Bestimmungen der Artikel 72/73 ZA-NTS. Bei der Prüfung, ob eine Person einen Wohnsitz oder gewöhnlichen Aufenthalt im Bundesgebiet hat, ist im Rahmen einer Abwägung der Gesamtumstände zu ermitteln, ob sie den Mittelpunkt der Lebensinteressen vom Ausland in das Bundesgebiet verlagert hat. Diese Prüfung hat nichts mit Artikel X NTS zu tun. Bei der Abwägung der Gesamtumstände würdigen die amerikanischen und deutschen Behörden folgende Tatbestände:

1. Length of time in the Federal Republic of Germany without status as a member of US Forces, civilian component or dependent (from ... to) / Dauer des Aufenthaltes im Bundesgebiet ohne Status als Mitglied der Truppe, des zivilen Gefolges oder dessen Angehöriger (von ... bis):

2. Performance of work in a trade, or in a free lance capacity, or in an employment status in the territory of the Federal Republic of Germany, which is / was not being done in the capacity as a member of US Forces or civilian component: None _____. If yes, _____ provide dates of employment, name of employer. / Ausübung einer gewerblichen, selbständigen oder nichtselbständigen Tätigkeit im Bundesgebiet, die nicht in der Eigenschaft als Mitglied der Truppe oder des zivilen Gefolges verrichtet wird / wurde: Keine _____. Wenn Ja, geben Sie Daten der Beschäftigung und Name des Arbeitgebers an:

3. Ownership of real property in the Federal Republic of Germany: Yes _____. No _____. Ownership of real property outside Germany Yes _____. No _____.
Besitz von Grundeigentum im Bundesgebiet Ja _____. / Nein _____. Besitz von Grundeigentum im Ausland Ja _____. / Nein _____

Real property / Grundbesitz	Location / Ort

4. Current or previous receipt of social benefits from German public funds by applicant, spouse or child: Yes _____. No _____. If yes, list all benefits and the circumstances surrounding the receipt of such benefits / Gegenwärtiger oder früherer Empfang von Sozialleistungen des Antragstellers, des Ehegatten oder eines Kindes aus deutschen Kassen: Ja _____. / Nein _____. Wenn Ja, erläutern Sie alle Leistungen und die Umstände im Zusammenhang mit ihrer Gewährung:

5. Do you have children? Yes _____. / No _____. If yes, provide the addresses where they currently reside.
Haben Sie Kinder? Ja _____. / Nein _____. Wenn Ja, geben Sie die jetzigen Wohnorte an.

Child's Name / Name des Kindes	Current address / Jetzige Adresse

4. Local Contracting Officer's Representative (COR), complete military address, telephone number, fax number, e-mail address: / Zuständiger Vertragsbediensteter, vollständige Militärschrift, Telefon, Telefax, E-Mail-Adresse:			
5. Place of work, civilian work address, German town and State, phone no / Arbeitsort, zivile Dienstanschrift, Ort und Land, Telefonnummer:			
6. Estimated starting date of employment contract / Voraussichtlicher Beginn der Tätigkeit:		6. Estimated end date of employment / Voraussichtliches Ende der Tätigkeit:	
7. Enclosed: a) Job description (technical experts detailed) (in case of troop care: proof of professional qualifications) b) Copy of employment contract / offer and acceptance, c) Curriculum vitae (resume) prepared by the employee d) For technical experts: education and training (name and description of educational establishment, description and date of qualifications obtained), professional background, description of military skills necessary for work:		7. Anlagen: a) Stellenbeschreibung (technische Fachkräfte ausführlich) (bei Truppenbetreuern: Qualifikationsnachweis) b) Kopie des Arbeitsvertrages, c) Lebenslauf (Resümee), d) Für technische Fachkräfte: Schulbildung und Ausbildung (Name und Bezeichnung der Bildungsanstalt, Bezeichnung und Datum des Abschlusses), beruflicher Werdegang, Darstellung der Fähigkeiten auf militärischem Gebiet	
8. Remuneration (wage or salary) / Vergütung (Lohn oder Gehalt):	US-\$: per month: _____ / per year: _____ pro Monat: _____ / pro Jahr: _____		
9. Monetary value of privileges / Wert der Privilegien:	US-\$: per month: _____ / per year: _____ pro Monat: _____ / pro Jahr: _____		
10. Description of the remuneration package in the general contract / Art und Wert der gesamten gewährten Vergütungsbestandteile im Generalvertrag:			

IV. Remarks of Contracting firm / Vermerke der Vertragsfirma

V. Declarations of the Employee / Erklärungen des Arbeitnehmers

Do you have the intention of becoming ordinarily resident in Germany ? Yes ____ No ____
Haben Sie die Absicht, in Deutschland ansässig zu werden ? Ja ____ Nein ____

Do you have or have you ever had a German work permit ? Yes ____ No ____
Haben Sie oder hatten Sie eine deutsche Arbeitserlaubnis ? Ja ____ Nein ____

If yes, provide all circumstances concerning that work permit (issuing authority, date issued, period of validity, and type of work permit).
Wenn Ja, geben Sie alle Umstände zur Erteilung an (ausstellende Behörde, Ausstellungsdatum, Gültigkeitsdauer und Art der Erlaubnis).

declare that the German authorities (including the tax authorities) are exempt from provisions of data protection (esp. exempt from the tax secrecy according to Sec. 30 Abgabenordnung/German Fiscal Code) regarding discussions with the US-Forces on privileges.
Ich befreie hiermit die deutschen Behörden von den Vorschriften des Datenschutzes (insbesondere die Befreiung vom Steuergeheimnis gem. Paragraph 30 der Abgabenordnung).

Place and date/Ort und Datum)

(Signature of the individual/Unterschrift)

NOTE: This application with enclosures identified in Item III, #7 above will be provided to German authorities. /Hinweis: Diese Informationen (einschliesslich der in II.7 bezeichneten Anlagen) werden den Deutschen Behörden übermittelt.

6. If you have children who attend a kindergarten or educational institution or who no longer attend such but have attended such during periods of time you have spent in Germany, specify the name and locations of institutions attended, as well as dates attended, for each of these children / Falls Sie Kinder haben, die eine Kinderbetreuungseinrichtung oder Bildungseinrichtung besuchen oder während Ihres Aufenthaltes in Deutschland besucht haben, geben Sie Name und Ort der besuchten Einrichtung und die Daten des Besuches an.

Child's Name / Name des Kindes	Name and Location of Kindergarten or education institution / Name und Ort der Kinderbetreuungseinrichtung oder Bildungseinrichtung	Dates attended / Zeiten des Besuches

7. List all sources of income for you and your spouse other than from your/ your spouse's current employment (specify type and location of the source of that income including investment income / Geben Sie alle Ihre Einkommensquellen und auch die Ihres Ehegatten an, ausgenommen jetzige Arbeitsverhältnisse (spezifizieren Sie Art und Ort des Einkommens einschl. Kapitalerträge):

Type of income and source location / Art des Einkommens und Ort der Einkommensquelle	Amount Currency / Betrag Währung	Applicant / Antragsteller	Spouse / Ehegatte

8. Main focus of social and societal relations (within or outside the Federal Republic of Germany) /
Schwerpunkt der sozialen und gesellschaftlichen Beziehungen (in oder außerhalb des Bundesgebietes):

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9. If you are married and your spouse has worked in Germany during that marriage, specify all of your spouse's employers and actual dates of employment by each employer (If applicable, include time spent by your spouse as a member of the US Forces or a civilian employee of the US Forces as well as self-employment (SE) / Wenn Sie verheiratet sind und Ihre Ehegatte während ihrer Ehe in Deutschland gearbeitet hat, geben Sie alle Arbeitgeber Ihres Ehegatten und die jetzigen Daten der Arbeitsverhältnisse getrennt nach Arbeitgebern an (einschließlich der Zeiten, die Ihr Ehegatte gegebenenfalls als Mitglied der US Truppen oder als Zivilangestellter der US Truppen war, sowie selbständige Tätigkeiten).

Actual dates of employment / Aktuelle Daten des Arbeitsverhältnisses	Name and address of employer / Name und Anschrift der Arbeitgebers	USF/ US-Truppe	CIV/ Zivilang.	SE / Selbständig

III. Professional Details / Dienstliche Angaben

1. Name of the enterprise/company (employer), German civilian address, town and State, Phone No.: / Name der Firma (Arbeitgeber), deutsche Zivilanschrift, Ort und Land, Telefonnummer:

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2. Contract No., Effective date, Expiration date: / Vertragsnummer, Beginn und Ende des Vertrages:

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3. Position Title / Stellenbezeichnung:

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Has job title been accredited for technical expert under above contract? Yes ____ , No ____
Wurde die Stellenbeschreibung im oben genannten Vertrag bereits für eine technische Fachkraft
anerkannt? Ja ____ Nein ____

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